

Seabrook Charter Review Commission

Final Report to City Council

October 15, 2019

Commission Members:

John Chisler, Chair

Rob Hefner, Vice Chair

Bruce Dresner

Marcy Fryday

Nancy Jones

Terry Moore

Richard Tomlinson

The Seabrook Charter Review Commission, commissioned by City Council to review the City's Charter and to recommend any changes as seen necessary by the Commission, respectfully submits the following report of the Commission's findings and proposed Charter amendments to City Council to be voted upon by the electorate of the City of Seabrook at a Special Election in May 2020.

The commission's goal was to recommend changes that were deemed necessary in order to improve City operations, address statutory changes, and to create better consistency within the Charter, to allow for easier interpretation in the future. The Commission received input from City Council, the City Manager and staff, the City Secretary, the City Attorney, the Municipal Court Judge, and from the citizens of Seabrook. All input was weighted equally, regardless of the source. Following the highlighted recommendations of the Commission on each Article of the Charter is a brief explanation of the Commission's reasoning for these recommendations, and the Commission's assessment of its positive, negative or neutral impact to the City's budget.

We request that this official report showing the proposed amendments be placed on the City web site after City Council review, to allow citizens ample time to review all proposed changes before the May 2020 election.

No proposed changes:

Article I: Incorporation

Article III: The City Manager

Article IV: Administrative Departments

Article V: Financial Procedures

Article VIII: Initiative, Referendum and Recall

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ARTICLE II: THE COUNCIL

Proposition 1: Section 2.02 – Qualifications

Update and change the qualifications to be a Councilmember from 18 years of age to at least 21 years of age.

Commission Explanation: Texas Election Code, Section 141.003, allows the City of Seabrook to increase the minimum age required to qualify to be a Councilmember from 18 years of age to at least 21 years of age.

Budget Impact: There is no expected budgetary impact.

Section 2.02. - Qualifications.

A member of the Council shall be at least 21 years of age, be a citizen of the United States of America and a qualified voter of the State of Texas. He or she shall be a resident within the corporate limits of the City, and shall have been for a period of twelve (12) months prior to the election. No Councilmember currently holding an unexpired term on Council may file for another office without resigning from his or her current unexpired term. A member of the Council ceasing to possess any of the qualifications specified in this Charter or who is convicted of a felony while in office shall immediately forfeit his or her office.

Proposition 2: Section 2.04 – Mayor and Mayor Pro Tem

Add the phrase, “be a voting Councilmember of the City Council and shall be” after shall in the first sentence; and delete additional unnecessary language regarding signing of official documents.

Commission Explanation: The Mayor has always been a voting member of the Seabrook City Council; however, since the last Charter election in 2015, the Texas Attorney General’s office had an occasion to question the City of Seabrook about whether the Mayor could always vote or could only vote in the case of a tie. This amendment will more clearly establish that the Mayor is a voting member of the Seabrook City Council.

Budget Impact: There is no expected budgetary impact.

Section 2.04. - Mayor and Mayor Pro-Tem.

The Mayor shall be a voting Councilmember of the City Council and shall be the official head of the City government. He or she shall preside at all meetings of the Council, shall have a vote on all Council actions, and shall when authorized by the Council, sign all official documents ~~such as ordinances, resolutions, conveyances, grant agreements, official plats, contracts, and bonds~~. He or she shall perform such other duties consistent with this Charter or as may be imposed upon him or her by Council. He or she shall not have the power of veto.

Proposition 3: **Section 2.10 – Rules of Procedure**

Remove the requirements of a roll call vote.

Commission Explanation: The City Council is required by law to take a roll call vote on budgetary items, such as when the tax rate is adopted for the next fiscal year. If not required by law, a roll call vote should not be necessary, and counting the ayes and nays by the City Secretary is sufficient to document the actions of the governing body.

Budgetary Impact: There is no expected budgetary impact.

Section 2.10. - Rules of procedure.

The Council shall, by ordinance, determine its own rules and order of business and the rules shall provide that citizens of the City shall have a reasonable opportunity to be heard at any meeting at a regular scheduled time on the agenda in regard to any matter whether or not the topic they wish to discuss is under consideration on the agenda. Any member of Council may place any ordinance or topic in writing on the agenda of any Council meeting. The Council shall provide for minutes being taken and recorded of all meetings, and such minutes shall be a public record. Voting, except of procedural motions, ~~shall be by roll call and the ayes and nays and~~ shall be recorded in the minutes. Four (4) Councilmembers shall constitute a quorum for the purpose of transaction of business and no action of the Council, except as provided elsewhere in this charter or in state law, shall be valid or binding unless adopted by the affirmative vote of a majority of the Councilmembers present and voting aye or nay. Abstentions shall not be counted as an aye or nay vote and shall be allowed.

Proposition 4: **Section 2.11 – Passage of ordinances in general**

Remove the requirement that an ordinance be read in its entirety at the request of two Councilmembers.

Commission Explanation: Often City ordinances can be lengthy and an update to an ordinance can be difficult to read in its entirety and be understood, such as when several sections of the zoning ordinance are deleted and replaced with new sections. The City Charter requires that the ordinance, in its entirety, be available for public viewing or distribution before the first reading, giving residents and members of the public the opportunity to see the changes being proposed. Ordinances are also customarily attached to the Council agenda on the City's website, making the entire document freely and easily accessible.

Budget Impact: There is no expected budgetary impact.

Section 2.11. - Passage of ordinances in general.

- (d) *Reading:* The reading aloud of the title and caption of the ordinance shall suffice as a reading, provided printed copies of the ordinance, in the form required for adoption, are in front of all members of Council and a reasonable number of additional copies are available to citizens present at the meeting. ~~If two (2) Councilmembers request that the ordinance be read in its entirety, it must be so read.~~

ARTICLE VI: PLANNING AND ZONING

Proposition 5: Section 6.04 – Powers and Duties

Remove the requirement that the Planning and Zoning Commission meet at least once per month.

Commission Explanation: Often there are no cases or zoning requests for the Commission to hear in any given month; therefore, a requirement to meet once per month could be overly burdensome on the Planning and Zoning Commission as well as City staff.

Budgetary Impact: This amendment could save the costs of conducting an unnecessary meeting, such as staff overtime, meeting supplies, building operations, that cannot be quantified.

Section 6.04. - Powers and duties.

- (e) Recommend to the Council for adoption a building code which shall include the minimum standards of construction of buildings, and the minimum standards for plumbing, wiring and gas piping.
- ~~(f) — Meet not less than once each month at City Hall unless prior notice of change of meeting place be given in accordance with Section 11.12.~~
- (g) Perform such other duties and be vested with such other powers as the Council shall from time to time prescribe.

Proposition 6: Section 6.06 – Development of Property

Remove the entire Section 6.06.

Commission Explanation: This section is ambiguous as to what is being prohibited. It is common practice for developers to look to city charters to understand the development requirements for any particular community. Because of the ambiguity, Seabrook may not be deemed as competitive as neighboring cities who do not have such provisions in attracting new commercial business.

Budgetary impact: Budget impact cannot be qualified due to variables.

~~Section 6.06. — Development of property.~~

~~No expenditure of public funds shall be authorized by the Council for the development of privately owned property within or beyond the corporate limits of the City, except for the extension of utilities or service to such areas within the city limits~~

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ARTICLE VII: NOMINATIONS AND ELECTIONS

Proposition 7: Section 7.01 – Nominations and Elections

Remove “second Saturday in May, unless otherwise allowed” and replace with “as provided” by state law.

Commission Explanation: The Texas State Legislature has changed the May uniform election date to the first Saturday in May, and the Legislature has attempted to do away with the May uniform election date altogether in the last two legislative sessions. Amending Section 7.01 to remove any reference to a specific date and allowing the phrase “as provided by state law” will ensure that the Seabrook Charter adheres to the requirements of the Texas Election Code.

Budgetary Impact: There is no expected budgetary impact.

Section 7.01. - Nominations and elections.

- (a) *Regular Elections:* The general city elections will be held annually ~~on the second Saturday in May, unless otherwise allowed~~ as provided by state law. The Council shall fix the place for holding such an election.

ARTICLE IX: COURTS

Proposition 8: Entire Article IX – Courts

Clarify that the Seabrook Municipal Court is a Court of Record by adding the phrase, “of Record” to each instance in Article IX where “Municipal Court” is referenced. In addition, clarify that the Municipal Court Judge is the Presiding Judge of the Court by adding “Presiding” in all instances where Municipal Court Judge is referenced.

Commission Explanation: The Seabrook Municipal Court has been operating as a Municipal Court of Record, in accordance with Chapter 30 of the Texas Government Code, since 2004 with the adoption by the Seabrook City Council of Ordinance 2004-09; therefore, this amendment will correctly reflect the type of court operating in the City of Seabrook. In addition, differentiating the Presiding Judge from any and all Alternate Judges will more clearly define the roles and responsibilities of those appointed to serve in the Seabrook Municipal Court.

Budgetary Impact: There is no expected budgetary impact.

Proposition 9: Section 9.02 – Judge of the Municipal Court

Remove the residency requirement for the Judge of the Municipal Court.

Commission Explanation: Removal of the residency requirement will enable the City of Seabrook to be competitive and be able to find qualified judges to serve in the Seabrook Municipal Court.

Budgetary Impact: There is no expected budgetary impact.

Proposition 10: Section 9.02 – Judge of the Municipal Court

Change the appointment term from three (3) years to four (4) years.

Commission Explanation: Chapter 30 of the Texas Government Code allows for appointment of judges to a Municipal Court of Record for either a two (2) year or a four (4) year term.

Budgetary Impact: There is no expected budgetary impact.

ARTICLE IX. – COURTS

Section 9.01. - Municipal Court of Record.

There shall be a court known as the Municipal Court of Record of the City which court shall be deemed always open for the trial of causes, and with such jurisdiction, powers, and duties as are given and prescribed by the laws of the State of Texas.

Section 9.02. - Judge of the Municipal Court of Record.

The Municipal Court of Record shall be presided over by a magistrate, appointed by an affirmative vote of four or more Councilmembers, known as the Presiding Judge of the Municipal Court of Record. He or she shall be an attorney at law licensed to practice in the State of Texas. ~~Unless the residency requirement is waived as explained below, he or she shall reside within the corporate limits of the City.~~ The Council, by an affirmative vote of four or more members, shall appoint alternate judges as needed who shall meet the qualifications required for appointment as a Presiding Judge. The City Council may waive the residency requirement when appointing a Municipal Court Presiding Judge or Alternate Judge with an affirmative vote of five (5) council members. The Council shall fix the compensation of the Presiding Judge and the alternate Judge of the Municipal Court of Record. The Presiding Judge and the Alternate Judge shall be appointed for a term of ~~three (3)~~ four (4) years unless otherwise required by state law. Removal of a judge during his/her term requires an affirmative vote of four or more Councilmembers, unless otherwise provided by state law. At the time of passage of this Charter change: (1.) the terms of the incumbent Presiding Judge and Alternate Judge shall expire on June 7, 1996, when qualified candidates shall be appointed to the respective offices for three year terms to expire on June 7, 1999, and a like term in each office shall be filled by appointment on said date every ~~three~~ four (4) years thereafter.

Section 9.03. - Clerk of the Municipal Court of Record.

There shall be a Clerk of the Municipal Court of Record who shall be appointed by the Presiding Judge of the Municipal Court of Record subject to confirmation of the Council. Such Clerk shall have the power to administer oaths and affidavits, make certificates, fix the seal of the Court thereto, and otherwise perform any and all acts necessary in issuing process of such Court and conducting the business thereof. There shall be such Deputy Clerks of the Municipal Court of Record as may be authorized by the Council and appointed by the Presiding Judge of the Municipal Court of Record subject to the approval of Council, which Deputy Clerks shall have authority to act for and on behalf of the Clerk of the Municipal Court of Record. The Clerk and Deputy clerks of the Municipal Court of Record shall be responsible to the Presiding Judge thereof and shall be subject to his or her direction and control. The Presiding Judge of the Municipal Court of Record shall recommend the level of compensation of the Clerk of court subject to confirmation by the Council.

Section 9.04. - Costs, process, and procedure in the Municipal Court of Record.

Sessions of the Municipal Court of Record shall be held at such times as the Judge(s) of the Municipal Court of Record may determine subject to confirmation by the Council. The dates of such court sessions and each change thereto should be filed with the City Secretary. The style of all writs issued out of the Municipal Court of Record shall be in the name of the City, all jurors shall be residents of said City and otherwise possess the same qualifications as jurors in State courts, and they shall be summoned in the same manner as provided for in Justice Courts.

Section 9.05. - Court separate from all departments.

The Municipal Court of Record of the City shall always be separate and apart from all departments of the City.

ARTICLE X: FRANCHISES AND PUBLIC UTILITIES

Proposition 11: Section 10.07 – Regulation of Franchises

Remove Section 10.07(f) in its entirety.

Commission Explanation: The Texas State Legislature has passed legislation over the past several legislative sessions that has removed much of cities' authority to regulate franchises in the public rights-of-way. Poles and other franchise owned facilities are now considered, under State law, to be private property that cities have no authority to use, even if such use would be in the public interest.

Budgetary Impact: Budget impact cannot be quantified due to variables.

Section 10.07. - Regulation of franchises.

- (e) To collect from every public utility operating in the City such proportion of the expense of excavating, grading, paving, repaving, constructing, reconstructing, draining, repairing, maintaining, lighting, sweeping, and sprinkling the streets, alleys, bridges, culverts, viaducts, and other public places of the City as represents the increased cost of such operations resulting from the occupancy of such public places by such public utility, and such proportion of the costs of such operations as results from the damage to or disturbance of such public places caused by such public utility; or to compel such public utility to perform, at its own expense, such operations as above listed which are made necessary by the occupancy of such public places by such utility or by damage to or disturbance of such public places caused by such public utility.

~~(f) To require every franchise holder to allow public utilities to use its poles and other facilities, including bridges and viaducts, whenever in the judgment of the Council such use shall be in the public interest, provided that in such event a reasonable rental shall be paid such owner of the facilities for such use. Provided further, that inability of such public utilities to agree upon rentals for such facilities shall not be an excuse for failure to comply with such requirement by the Council.~~

ARTICLE XI: GENERAL PROVISIONS

Proposition 12: Section 11.01 – Publicity of Records

Remove the phrase, “City Manager” and replace with “Texas Public Information Act”.

Commission Explanation: Release of public records by a local governing body is regulated by the Texas Public Information Act (Texas PIA); therefore, the City Manager is unable to authorize policies and procedures which conflict with the Texas PIA.

Budgetary Impact: There is no expected budgetary impact.

Section 11.01. - Publicity of records.

All records and accounts of every office, department or agency of the City except those closed to the public by law shall be open to inspection by any citizen, any representative of a citizen's organization or any representative of the press at all reasonable times and under reasonable regulations established by the ~~City Manager~~ Texas Public Information Act.

Proposition 13: Section 11.08 – Fire Department and Fire Marshal

Change “firemen” to “firefighters”.

Commission Explanation: The change is self-evident that the firefighting profession is not limited to male employees only.

Budgetary Impact: There is no expected budgetary impact.

Section 11.08. - Fire Department and Fire Marshal.

So long as it is determined advisable by the Council, the City may continue to contract with the Volunteer Fire Department existing at the time of the adoption of the Charter. At such time as the Council deems it advisable to do so, the Council may, by ordinance, create a regular Fire Department for the City in which event it may provide regulations, make provision for the employment of ~~firemen~~ firefighters, set up civil service rules, and make all such provisions as may be found necessary for the maintenance and government of such department, including provision for compensating personnel of such department.

Proposition 14: Section 11.16 – The Charter Review Commission And Amending the Charter

Remove the phrase, “appointment of the Commission” and replace with the phrase, “Charter Amendment Election”.

Commission Explanation: Appointment of the Charter Review Commission after the most recent Charter Amendment Election will more clearly and precisely define the time for the appointment of the Charter Review Commission.

Budgetary Impact: There is no expected budgetary impact.

Section 11.16. - The Charter Review Commission and Amending the Charter.

The Council shall appoint a Charter Review Commission of seven (7) citizens of the City no sooner than two (2) years and no later than five (5) years after the most recent ~~appointment of the Commission-~~ Charter Amendment Election.

Proposition 15: *Section 11.23 – Comprehensive Master Plan Review Commission*

Remove the phrase, “Council may not amend the Comprehensive Master Plan unless such an amendment is recommended by the Commission”.

Commission Explanation: To maintain the statutory authority of Council pursuant to State law, and to maintain consistency within the Charter, amendment of Section 11.23 is recommended for adherence with State law.

Budgetary Impact: There is no expected budgetary impact.

Section 11.23. - Comprehensive Master Plan Review Commission.

If, as or when the Comprehensive Master Plan is proposed to be amended, Council shall appoint at its next regular meeting a Comprehensive Master Plan Review Commission comprised of seven (7) citizens of the City. ~~Council may not amend the Comprehensive Master Plan unless such an amendment is recommended by the Commission.~~ Such a Commission shall be appointed no sooner than two (2) years and no later than five (5) years after the most recent ~~appointment of the Commission~~ plan adoption. The function of the Comprehensive Master Plan Review Commission is to develop a Comprehensive Master Plan that is a planning tool in keeping with the intent of Chapter 213 of the Texas Local Government Code. "Comprehensive Master Plan" as referenced in this section, is intended as an ongoing planning tool and does not constitute zoning regulations or establish zoning district boundaries.

Proposition 16: *Section 11.23 – Comprehensive Master Plan Review Commission*

Remove the phrase, “appointment of the Commission” and replace with “plan adoption”.

Commission Explanation: Appointment of the Comprehensive Master Plan Review Commission after the most recent Plan Adoption will more clearly and precisely define the time for the appointment of the Comprehensive Master Plan Review Commission.

Budgetary Impact: There is no expected budgetary impact.

Section 11.23. - Comprehensive Master Plan Review Commission.

If, as or when the Comprehensive Master Plan is proposed to be amended, Council shall appoint at its next regular meeting a Comprehensive Master Plan Review Commission comprised of seven (7) citizens of the City. ~~Council may not amend the Comprehensive Master Plan unless such an amendment is recommended by the Commission.~~ Such a Commission shall be appointed no sooner than two (2) years and no later than five (5) years after the most recent ~~appointment of the Commission~~ plan adoption. The function of the Comprehensive Master Plan Review Commission is to develop a Comprehensive Master Plan that is a planning tool in keeping with the intent of Chapter 213 of the Texas Local Government Code. "Comprehensive Master Plan" as

referenced in this section, is intended as an ongoing planning tool and does not constitute zoning regulations or establish zoning district boundaries.

ARTICLE XII: TRANSITIONAL PROVISIONS

Proposition 17: Article XII – Transitional Provisions

Change the title of Article XII from Transitional Provisions to Historical Reference.

Commission Explanation: The creation of Article XII was originally intended to allow for and account for the transition from a General Law City to a Home Rule City. Currently, the provisions in Article XII are historical, rather than transitional, and are not intended to be enforced or have impact on current City operations. However, the historical significance of the sections of Article XII should be preserved, thus a change in the title from Transitional Provisions to Historical Reference.

Budgetary impact: There is no expected budgetary impact.

ARTICLE XII. - ~~TRANSITIONAL PROVISIONS~~ HISTORICAL REFERENCE